

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.
APPEAL NO. 523 OF 2006
IN
NOTICE OF MOTION NO.1200 OF 2003
IN
SUIT NO.803 OF 2003

Duraiya Mansur Petiwala and another .. Appellants
v/s.
Shabbir Hussain Taherbhai Petiwala and others .. Respondents

Ms. Farishta Sethna with Ms. Deepti Das i/by M/s.. D. Sett for the appellants.

Mr.Janak Dwarkadas, senior counsel with Mr.Birendra Saraf and Mr.Subhash Jadhav i/by M/s..ALMT Legal for the respondent Nos.1 and 2.

Mr.Vivek Kantawala for the respondent No.3A.

Mr. V.M. Sharma for the respondent No.3B.

Ms. Sanidha Vedpathak i/by M/s. Maneksha & Sethna for the respondent No.4.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 5TH SEPTEMBER, 2006.

P.C.

During the course of motion hearing of the appeal, our attention was invited to the instrument dated 4th April, 1997 entitled "Memorandum Recording Oral Family Settlement". Upon perusal thereof, we entertained the doubt of the said instrument having been duly and sufficiently stamped. Initially, we thought of impounding the said instrument and sending the same for adjudication, but Mr. Janak Dwarkadas, senior counsel for the

respondent Nos.1 and 2 stated that the said respondents on their own shall produce the original instrument before the authority viz. Superintendent of Stamps, Mumbai for adjudication with regard to the stamp duty without prejudice to their contention that no stamp duty is payable on the said instrument.

2. We, accordingly, pass the following order:-

- (i) The respondent Nos.1 and 2 shall submit the instrument "Memorandum Recording Oral Family Settlement" dated 4th April, 1997 with the Superintendent of Stamps, Mumbai within one week from today.
- (ii) The Superintendent of Stamps, Mumbai shall examine the said instrument and pass an appropriate order after hearing the respondent Nos.1 and 2 and the other parties to the memorandum uninfluenced by any observation made by us in the present order.
- (iii) We expect the Superintendent of Stamps, Mumbai to take decision in this regard within six weeks of the production of the said document by respondent Nos.1 and 2.

3. The counsel for the appellants submits that chamber summons No.559 of 2006 has been taken out by the appellants (plaintiffs) seeking amendment in the plaint. We observe that the

plaintiffs shall be at liberty to apply for ad-interim relief afresh in the light of the order that may be passed on the said chamber summons without prejudice to the rights and contentions of the respondents.

4. In this backdrop, the counsel for the appellants prays for withdrawal of the appeal. The appeal is allowed to be withdrawn.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)